



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 2054P

B-176716

April 16, 1973

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Emerson and Cuming, Inc.  
Microwave Products Division  
59 Walpole Street  
Canton, Massachusetts 02021

Attention: Mr. David A. Stuntz  
Treasurer

Gentlemen:

Reference is made to your telegram of August 8, 1972, and subsequent correspondence, protesting the rejection of your bid as nonresponsive under invitation for bids (IFB) No. F33615-72-B-1940, issued at Wright-Patterson Air Force Base, Ohio, on March 20, 1972.

The IFB described the work required as follows:

This procurement is being initiated to update and improve the measurement capability of the existing research and development facility known as TAPA (Three-dimensional Antenna Pattern Analyzer). The facility is located in the north end of Bldg 821, Area B, which is situated on National Road.

The clause entitled "Requirement for Descriptive Literature" had been deleted from the initial solicitation, but by modification No. P00002, dated April 14, 1972, such clause was made part of the IFB. Seven bids were received, and opened on May 17, 1972. The low bid thereunder was submitted by Emerson. Each bidder's descriptive literature was technically reviewed with the result that only two bidders were found to have submitted literature indicating compliance with both the electromagnetic and structural requirements of the IFB. The low bids of Emerson and C & N Industrial Maintenance, Incorporated, were determined to be deficient in areas for which descriptive literature was required--Emerson on the structural aspect, and C & N on the electromagnetic requirements. Consequently, award was made to the third lowest bidder, Eastern Microwave Corporation, on June 19, 1972. The unsuccessful bidders were notified accordingly by letters dated June 21, 1972, from the contracting officer.

Emerson, by TWX dated June 23, 1972, notified the contracting officer of its formal protest of the award. This was followed by

[Protest of Bid Rejection as Nonresponsive]

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Emerson's letter on that date taking exception to the Government's claim that it failed to comply with the IFB requirement for descriptive literature. Also on this date a meeting was held between Emerson and Air Force representatives to discuss the matter. By letter dated August 3, 1972, the Air Force denied Emerson's protest. This was followed by your protest to our Office on August 8, 1972.

You contend that your bid complied with the IFB descriptive literature requirements, and that the contention of the contracting officer in his bid rejection letter of June 21, 1972, that the drawing submitted with your offer provided nothing in the way of "structural definition" cannot be sustained because the quoted words do not appear in the IFB. You conclude therefrom that the failure to furnish information in that regard did not render the bid nonresponsive.

In addition to making this clause applicable to the IFB, modification No. P00002 required bidders to comment--by way of descriptive literature--on paragraphs 3.0 (revised), 4.1, 4.2 (revised), 4.3 and 4.4 of the Statement of Work attached to the IFB.

In responding to your protest, it must be determined whether descriptive literature was required as to structural matters. The IFB prescribed that descriptive literature "establish, for the purposes of bid evaluation and award, details of the products the bidder proposes to furnish as to design and performance characteristics." Revised paragraph 4.2 of the Statement of Work upon which comment was required by the descriptive literature clause states that "the supporting structure and the installation of microwave absorber on the support mas. also be provided during this program." This paragraph then goes on to describe general requirements in connection with the supporting structure. It should be noted that Emerson clearly understood this paragraph to involve structural matters since its comment on paragraph 4.2 was entitled "Structure" and stated that "final design of the structure will be provided in the form of shop drawings for approval by AFAL personnel prior to erection. \* \* \*" In addition, paragraph 2.0 states that "\* \* \* the scope of this procurement consists of (1) design and construction of three walls which will be attached to the permanent building structures \* \* \*." We therefore conclude that that descriptive literature with respect to structural matters had to be furnished with the bid as a matter of responsiveness.

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In the circumstances, since you failed to comply with the descriptive literature requirement, your bid was properly rejected as nonresponsive. Accordingly, the protest is denied.

Sincerely yours,

PAUL G. DEMBLING  
For the Comptroller General  
of the United States

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